

**Assembly Committee on Education
January 14, 2015**

**Wisconsin Department of Public Instruction
Testimony in Opposition to 2015 Assembly Bill 1**

Representative Theisfeldt, thank you for your commitment to improving educational outcomes and holding public hearing on this important issue. My name is Jeff Pertl, and I am a Senior Policy Advisor at the Department of Public Instruction (DPI). I am testifying in opposition to Assembly Bill (AB) 1 as drafted.

The recent work and discussion around school accountability began more than five years ago. Advocates, legislators from both parties, policy experts, parents and educators began an unprecedented, systemic effort to improve educational outcomes. These included new district and school report cards, an educator effectiveness system, interventions for low performing public schools, college-and career-ready standards, interoperable data systems, academic and career planning, and next generation assessments.

A comprehensive accountability system for all publicly-funded schools has always enjoyed broad support. However, the devil has been in the details in getting a bill passed.

There have been countless bill drafts, proposals, counter proposals, legal reviews and negotiations all aimed at bringing a widely held value (accountability for all schools) to fruition in an equitable, feasible way that is: (1) easily understood by parents and the public; (2) fair to wide-ranging types of districts and schools; and (3) constitutional with regard to the state superintendent's authority and private schools' autonomy.

Despite the challenges, the legislature has enacted school accountability legislation in all three previous legislative sessions:

- **2009 WI Act 28** required students in choice schools to take the state assessment.
- **2009 WI Act 215** strengthened the state superintendent's authority to intervene in low-performing schools and districts.
- **2011 WI Act 32** (*2011-13 State Budget*) updated assessment and data systems.
- **2011 Accountability Design Team** led by Gov. Walker, State Superintendent Evers, Senator Olsen and Representative Kestell.
- **2013 WI Act 20** (*2013-15 State Budget*) required choice schools to receive report cards; codified the report cards in statute.
- **2013 WI Act 237** strengthened pre-accreditation requirements for choice schools.

- **2013 WI Act 256** clarified choice school interoperability in the state data system and uniform use of data for all schools in the accountability system.

Assembly Bill (AB) 1 builds upon those previous proposals and is a first step in (hopefully) resolving the accountability conversation and providing stability and predictability for schools and communities around this issue. Based on our initial review, AB 1 makes some improvements over previous efforts, but also raises several constitutional issues and policy concerns. Additionally, there are numerous technical and drafting errors, which appear to run counter to the author's intent.

Summary of Major Policy Concerns

- The **Academic Review Board (ARB) should make recommendations** subject to the State Superintendent's final approval. Granting the ARB decision making authority will run afoul the state constitution (see *Thompson v. Craney*).
- The state should continue to rely on **one, uniform assessment for accountability**. Multiple tests reduce validity, transparency, and accuracy –significant problems for high stakes accountability.
- Adopting **“Grades” will negatively impact how parents and communities view the average school**. School performance data falls into a “bell curve” (or normal distribution). This means most schools fall in the middle and currently “meet expectations.” Relabeling those as “C” schools will negatively impact the public's perception of those schools, since the average grade students earn in school is actually a “B.” Most parents view “C” as underperforming.
- The business community and education stakeholders strongly support a continually improving accountability system that will incorporate more college and career ready data in the near future (AP and IB data, military readiness exam data, college enrollment and persistence data, workforce performance data, etc.). **This proposal limits the ability to integrate new college and career ready measures.**
- AB 1 uses only one year of data for determining report cards, which would make calculating growth impossible (even though it is required under the bill) and lead to significantly greater year-to-year variance in scores. **Including multiple years improves the accuracy and fairness of the report card measures for all types of schools.**
- **Independent Charter Schools are not the best solution or sanction for all districts.** In particular, this is not a viable solution for small rural districts, will disrupt children and parents' lives, and was a source of major contention at the end of last session.
- **The alignment between state and federal accountability needs revision.** The link between Focus and “D” schools should be removed and additional resources should be provided for school to implement priority and other improvement requirements. Potential issues around using federal funds to “supplement not supplant” state activities will have to be addressed.

Wisconsin's Nationally-Recognized Report Card

ECS lauds Wisconsin Report Card

“[Wisconsin](#) and Ohio were the only two states whose report cards were top picks by parents, while also meeting and reporting all five essential indicators.”

– ECS Report



Parents and experts agree Wisconsin's School Report is among the best

ECS experts identified five essential indicators of meaningful accountability systems that states should measure and report:

- Student achievement
- Student academic growth
- Achievement gap closure
- Graduation rates
- Postsecondary and career readiness

While parents want report cards that

- Are easy to understand;
- Provide sufficient data; and
- Are useful

Wisconsin's School Report Card includes all five essential indicators and was highly ranked by parents.

According to ECS President Jeremy Anderson, “Wisconsin is a state dedicated to creating a high-quality accountability system, and to effectively communicating the results of such a system to the public. Transparency of accountability systems is essential for parents, educators, and policymakers to make informed decisions about their students and schools”

ECS identified several key policy issues to consider when developing accountability systems:

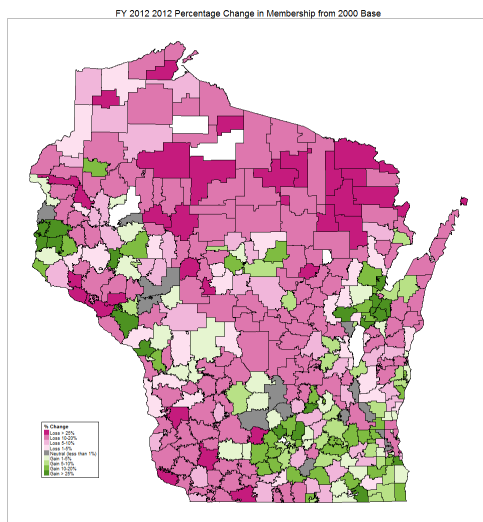
- Identify and publicize your state's “North Star.”
- Re-engage people in your schools. Good communication is vital to ensuring the data and accountability story is easily understood by everyone.
- Choose your indicators and metrics carefully. Know how to use an indicator — make it less about grading and shaming and more about what research says works and how to address problems.
- Be realistic about the limits of your data system. Highly mobile students may create special challenges in tracking proficiency and growth data.
- Consider the potential unintended consequences of what's being measured, rewarded or punished.

Source: Education Commission of the State, [Rating States, Grading Schools: What Parents and Experts Say States Should Consider to Make Accountability Systems Meaningful](#), May 28, 2014.

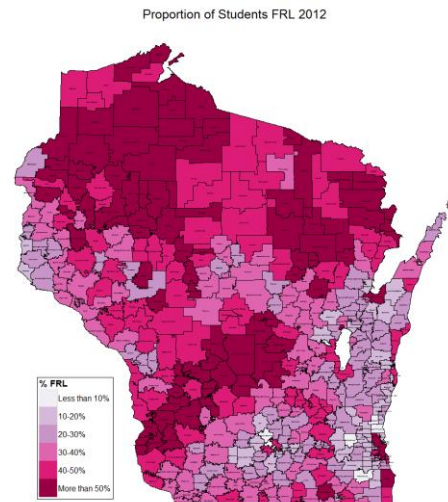
Sanctions & Differing Types of Schools

A robust accountability system must be fair and equitable for a wide array of public schools and districts with very different challenges.

Declining enrollment has concentrated students in fewer districts...



and those small, rural districts are facing growing poverty



Wisconsin has a large number of small, often rural school districts. In fact, **55 percent of districts enroll fewer than 1,000 students.**

In 2001, **1/3 of districts** were in **declining enrollment**, but by 2010, nearly **2/3 districts** were in **declining enrollment**.

While many districts are declining in enrollment, statewide enrollment has been stable—concentrating enrollment in a smaller number of districts. Today, **75 percent of students** are located in just **30 percent of districts**.

Cumulative Enrollment	Percentile	# of Districts	% of Districts
209,535	25%	8	2%
419,387	50%	41	11%
626,834	75%	114	30%
871,551	100%	424	100%

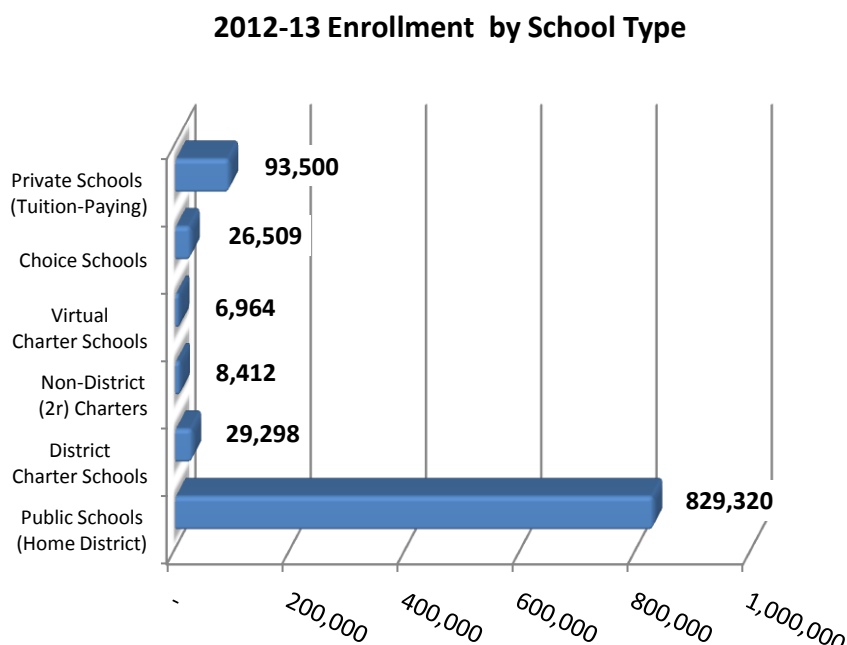
District Enrollment	% of Districts
Under 1,000	55%
Under 3,000	83%
Under 10,000	98%

Over the same period, statewide student eligibility for Free and Reduce Lunch (FRL) more than doubled from 21 percent to 43 percent.

The accountability system must also work well for all education sectors, driving improvement while recognizing inherent differences.

Most students attend a school governed by a local school board.

Wisconsin's 2,100 traditional public schools enroll almost 830,000 students (92 percent). Additionally, almost 30,000 students enroll in one of the 242 district charter schools (three percent) and almost 7,000 students (one percent) enroll in one of 30 virtual charter schools.



Efforts to ensure equity and fairness across education sectors (public, charter, and choice) are important as students move among school types, particularly in Milwaukee. However, while proportional representation on the ARB gives each sector an equal voice, it also greatly understates the role traditional public schools play in educating 92 percent of all students.

Fairness can be measured in many ways, and public schools should have sufficient representation to address the complexities of federal law, educator licensure, and state regulation.

Drafting errors will over-identify schools

The bill language states that any school receiving a D or F “in the 3rd school year of any 3 consecutive school years” is subject to sanction. This means a D or F is only required in the final year to trigger sanctions.

- **Using the 2013-14 data, this language would trigger sanctions on 224 schools in 47 districts, impacting 110,690 students and redirecting \$894 million in state school aid.**
- **If the legislation requires a D or F for three consecutive years, then 134 schools in 15 districts would fall under sanction, impacting 72,726 students and redirecting \$587 million in state school aid.**

The language should be redrafted so that sanctions should only be imposed on chronically low-performing schools.

Tying sanctions to federal Priority and Focus school designations will create challenges.

The Priority and Focus school designations were created in guidance related to the Elementary and Secondary Education Act (ESEA aka NCLB) waiver. They are not statutory terms and may not be included in the reauthorization of ESEA.

- The **59 Priority schools** are made up of the lowest 5% of Title I schools in the state.
- The **108 Focus schools** are identified for having large achievement gaps (but otherwise might be high performing schools).

DPI provides additional resources to federally identified Priority and Focus schools. The six non-MPS Priority schools receive approximately \$1.5 million per year in School Improvement Grant funds to support the significant requirements of Priority schools.

Due to the large percentage of MPS Priority and Focus schools, MPS interventions are targeted at the district level in order to improve performance in all schools. AB 1's focus on schools does not provide for district interventions and may conflict with MPS corrective action requirements.

Title I Focus schools receive grants of \$14,000 to help with costs related to professional development. Additional supports are provided to these schools. While the amounts are more modest, the same concerns as for Priority schools are raised.

AB 1 does not correctly align federal and state law. The focus school designation and interventions are based on achievement gaps, not overall performance. There is no relationship between being a focus school and rating Meets Few Expectations ("D") on the state report card.

The link between Focus and "D" schools should be removed and additional resources should be provided for school to implement improvement requirements. Potential issues around using federal funds to "supplement not supplant" state activities will have to be addressed.

Independent charters are not a feasible or appropriate sanction

Milwaukee and Racine have 23 non-district "independent" (2r) charter schools¹, which are public schools authorized by the following non-school board entities: UW – Milwaukee (12); City of Milwaukee (10); UW – Parkside (1); and Milwaukee Area Technical College (0).

In contrast to traditional public schools, independent charter schools are 100% state funded (no property tax); however, this state funding is created by withholding ≈1.5% of every district's general aid and redirecting it to the independent charters. Local districts then can increase their property taxes to make up the difference – essentially raising property taxes statewide.

There is no evidence that converting a public school to an independent charter school is an effective solution to the performance issues of the school. Wisconsin's Charter Management

¹ Non-district charters received \$8,075 per pupil in 2014-15 (compared to \$10,100 for the average district revenue limit), and were eligible for certain categorical aids (special education, bilingual-bicultural, etc.)

Organization (CMO) capacity is inadequate for the scale of conversion.

Additionally, charter schools generally have lower rates of special education enrollment, which may be due to specialized mission.² Differences in mission and experience working with some student populations may limit some CMOs' effectiveness in turning around a low performing school. This is particularly true in Milwaukee, which has a disproportionately high prevalence of students with special needs.

2012-13 Students with Disability Enrollment Percentage

	Wisconsin	Milwaukee
District (non-charter)	14.9%	20.2%
District Charter	12.2%	14.9%
2r Charter	N/A	10.6%

Finally, under current law students attending an independent 2r charter are not entitled to transportation (either from the 2r or the district). Thus, if a district only had one middle school, which was converted to an independent charter under AB 1, the students would not receive transportation. This raises equity and uniformity issues.

Instituting independent charters as the ultimate sanction in the accountability system presents several problems:

- There is no evidence that converting a public school to an independent charter school is an effective solution to performance issues.
- Conversion may not be a viable solution for small rural districts, which may have only one school each for elementary, middle and high school grades.
- The sanction imposed on a particular low-performing school should not negatively impact the funding of all other public schools.
- Wisconsin's CMO capacity is likely inadequate for large scale conversions, and there has been little interest from CMOs in taking over large comprehensive high schools.

The accountability system also has to recognize the unique structure:

- Charters operate under a legal contract, which cannot be abrogated by state law. Any relevant sanction may need to be included in future contracts.

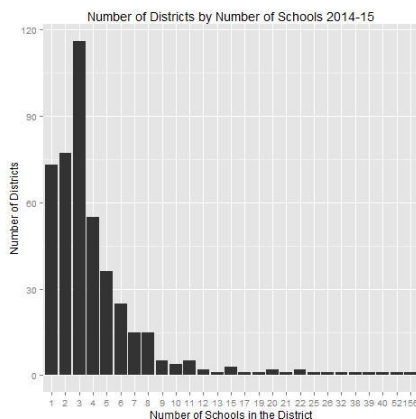
Determining where the appropriate authority and accountability rests can be challenging for independent 2r charters, which are operated by a management organization, governed by a local advisory board, and authorized by an external entity.

² Note the School for Early Development & Achievement predominantly serves students with special needs.

Most districts have only one elementary, middle, and high school.³

Independent charters are not a viable solution for many districts that have only one or two schools (often a K-8 and high school).

There are 73 districts (16%) that only have one school for all grades and an additional 77 districts (17%) that only have two schools for all grades.⁴



- There are 274 districts (61%) with only one *elementary school* and an additional 58 districts (13%) with only two *elementary schools*.
- There are 346 districts (77%) with only one *middle school* and an additional 49 districts (11%) with only two *middle schools*.
- There are 304 districts (68%) with only one *high school* and an additional 50 districts (11%) with only two *high schools*.

The majority of districts with only one school are K-8 or Unified High School (UHS) districts. Additionally, independent (2r) charters are considered individual districts.

Type	Independent (2r) Charter	K-12	K-8	Unified High School (UHS)	Total
Count	23	5	35	10	73
Share	32%	7%	48%	14%	100%

In *Davis v. Grover* (1992) the Wisconsin Supreme Court found that uniformity clause is about giving children the *opportunity* to attend a free, uniform district school, not about *mandating* that they do so. **So, while the legislature may expand educational opportunities, a sanction that eliminates students' access to traditional public school would likely be unconstitutional.**

Sanctions should be used to improve, not limit, educational options. A feasible accountability system has to have a meaningful pathway for public school improvement.

³ For this purpose, elementary school is defined as a school enrolling students in first grade, middle school is as enrolling students in sixth grade, and high school is as enrolling students in ninth grade.

⁴ There are 447 public schools and non-district charter (2r) schools with first grade or higher.

List of 73 Districts/ 2r Charters with only one school (district, type)

Mellen	K-12	Arrowhead UHS	UHS
Mercer	K-12	Big Foot UHS	UHS
Norris	K-12	Central/Westosha UHS	UHS
Princeton	K-12	Hartford UHS	UHS
Solon Springs	K-12	Lake Geneva-Genoa City UHS	UHS
Brighton #1	K-8	Lakeland UHS	UHS
Bristol #1	K-8	Nicolet UHS	UHS
Dover #1	K-8	Union Grove UHS	UHS
Erin	K-8	Waterford UHS	UHS
Fontana J8	K-8	Wilmot UHS	UHS
Friess Lake	K-8	21st Century Prep School	2R
Geneva J4	K-8	Bruce Guadalupe	2R
Herman #22	K-8	Capitol West Academy	2R
Lac du Flambeau #1	K-8	Central City Cyberschool	2R
Lake Country	K-8	DLH Academy	2R
Linn J4	K-8	Downtown Montessori	2R
Linn J6	K-8	Escuela Verde	2R
Neosho J3	K-8	King's Academy	2R
North Cape	K-8	Milwaukee College Prep--36th St	2R
North Lake	K-8	Milwaukee College Prep--North	2R
North Lakeland	K-8	Milwaukee Academy of Science	2R
Norway J7	K-8	Milwaukee Collegiate Academy	2R
Paris J1	K-8	Milwaukee Math and Science	
Randall J1	K-8	Academy	2R
Raymond #14	K-8	Milwaukee Scholars Charter	2R
Richmond	K-8	North Point Lighthouse Charter	2R
Rubicon J6	K-8	Rocketship Southside Community	
Salem	K-8	Prep	2R
Sharon J11	K-8	School for Early Development &	
Silver Lake J1	K-8	Achievement (SEDA)	2R
Stone Bank	K-8	Seeds of Health EI	2R
Swallow	K-8	Tenor High School	2R
Trevor-Wilmot Consolidated	K-8	Urban Day School	2R
Twin Lakes #4	K-8	Veritas High School	2R
Union Grove J1	K-8	Woodlands School	2R
Walworth J1	K-8	Woodlands School East	2R
Washington-Caldwell	K-8		
Wheatland J1	K-8		
Woodruff J1	K-8		
Yorkville J2	K-8		

Constitutional Concerns

The Academic Review Board should develop policy recommendations, but regulatory authority violates the state constitution.

The composition of the proposed Academic Review Board (ARB) is much improved over previous versions, and the ARB can play a crucial role in school accountability, developing recommendations and reviewing the metrics, weighting and impact of the system.

However, Article X, Sec. 1 of the Wisconsin Constitution vests the State Superintendent with the authority to supervise public instruction. Several provisions in the bill appear to violate the State Constitution, in providing the ARB with the authority to:

1. Approve alternative assessments that may be used by schools in lieu of those approved or adopted by the State Superintendent.
2. Establish, by rule, a comprehensive school review system that the Department must implement.
3. Specifies the information DPI may consider for each performance measure and prohibits the Department from considering other information. [It is not clear whether the ARB rule making authority extends to the ARB adding additional categories of information.]
4. Make a determination of a school's performance.
5. Direct the State Superintendent to impose (or lift) sanctions on schools as a means of intervening with low-performing schools.
6. Approve alternative improvement plans for school placed under sanctions.

The Wisconsin Constitution states that “supervision of public instruction shall be invested in the state superintendent, and other officers as the legislature shall direct.” However, the State Supreme Court has consistently ruled that those other officers must be subordinate to the authority of the elected State Superintendent (*Thompson v. Craney*).

Thompson v. Craney, 199 Wis. 2d 674, 546 N.W.2d 123 (1996)

“Our review of these sources demonstrates beyond a reasonable doubt that the office of state Superintendent of Public Instruction was intended by the framers of the constitution to be a supervisory position, and that the "other officers" mentioned in the provision were intended to be subordinate to the state Superintendent of Public Instruction. Because the education provisions of 1995 Wis. Act 27 give the former powers of the elected state Superintendent of Public Instruction to appointed "other officers" at the state level who are not subordinate to the superintendent, they are unconstitutional beyond a reasonable doubt. If changes such as those proposed in 1995 Wis. Act 27 are to be made in the structure of educational administration—and we express no judgment on the possible merits of the changes—they would require a constitutional amendment.”

This finding was affirmed by the circuit court with regard to 2011 Act 21, where the court ruled that the Legislature cannot give the Governor approval over Department of Public Instruction administrative rule scope statements because it undermines the state superintendent's constitutional authority.

Coyne v. Walker, Wisconsin Circuit Court, Branch 4, Oct. 30, 2012

"Act 21, like the statute in Thompson, involves not taking away some specific power from the Superintendent, but rather giving another officer superior authority over public instruction. Since rulemaking is one of the key ways the Superintendent supervises public instruction, giving the Governor, and in some cases the DOA Secretary, the right to veto any attempts at submitting scope statements or proposing new rules grants these officers superior authority over the supervision of public instruction. Under Thompson, this is unconstitutional."

ARB should develop policy recommendations that are subject to the State Superintendent's final approval to avoid litigation and constitutional concerns.

Maintaining a Strong Report Card

The state should use one, uniform assessment for accountability

Public schools and independent charters are required under federal law to take the state assessment. Additionally, 2009 WI Act 28 required choice schools to take the state assessment. For the last four years, the public has had access to performance information *on the same assessment* for all publicly funded students in Wisconsin.

The most accurate and fair comparisons across schools and students are made when the same tests, measuring the same knowledge, and administered under the same conditions, are given.

All comparisons decline at least somewhat in quality when results are equated across different tests, especially as the number of tests increases. Additionally, as the number and complexity of the tests increases so will the cost and time necessary to accurately equate results.

The accountability system should continue to use the state assessment. Higher costs and less confidence will not improve school accountability.

Student engagement indicators (absenteeism, drop out, etc.) should remain part of the report card calculations.

The bill also excludes measures of student engagement, including data regarding absenteeism or dropout rates currently used in the report cards. Absenteeism, in particular, is a measure that has drawn attention to attendance data in a different and important way. If the report cards are going to drive improvement, absenteeism, dropout rates, and student engagement are important indicators to maintain in the system.

Adopting “Grades” will negatively impact how families and communities view the average school.

The report cards were not designed to reflect student grading patterns; they were designed to quantify the performance of a school. Parents and the public have strong perceptions related to grades. While the majority of schools would receive an acceptable report card score and meet the expectations the design team placed upon them, changing their school accountability rating to a “C” carries a connotation of underperformance that they simply aren’t displaying.



Over 80 percent of schools and over 90 percent of districts fall in the second (exceeds expectations) or third (meets expectations) categories. In contrast, student grades do not follow this pattern. According to the U.S. Department of Education, the average student has 3.0 GPA (or a B)—not a “C” average.⁵

2012-13 Accountability Score Data

Category	# schools	% schools	# districts	% districts	Grade
Significantly Exceeds Expectations	86	5%	9	2%	A
Exceeds Expectations	693	36%	134	32%	B
Meets Expectations	904	47%	269	64%	C
Meets Few Expectations	169	9%	10	2%	D
Fails to Meet Expectations	58	3%	1	0%	F

Almost half of all schools and almost two-thirds of Wisconsin’s school districts would no longer “meet expectations,” but rather would be graded a “C.” This sends the wrong message about school performance that would undermine Wisconsin’s history of strong public education.

Multiple years of data are needed to calculate growth, create stability.

AB 1 effectively limits the DPI to using one year of data for calculating the required area scores, which is likely to result in significant variability of grades from one year to the next.

⁵ -- “The Nation’s Report Card.” U.S. Dept. of Education. <http://www.nationsreportcard.gov/>

Currently, the Department uses multiple years of data in order to ensure that measures are as fair, valid, and reliable as possible for schools of all types and sizes. The limitation to one year of data will make calculating growth (over more than one year) impossible, even though measures of growth are required under the bill. **All of the education sectors and members of the Accountability Design Team favored multiple years of data.**

Maintain current law with regard to using multiple years of data for report card calculations.

Including value-added growth will not significantly alter school ratings

Introducing value-added growth would disrupt the current report card system, while having a very marginal impact on growth and overall scores. Additionally:

- Using value-added growth without demographic controls would introduce new costs, and be less helpful for school improvement efforts than the current growth model, which offers student-level growth projections; and
- School report cards are a multi-measure system with growth accounting for 25 percent of the score. Even with demographic controls, incorporating value-added would only marginally reduce the poverty correlation (from $-.71$ to $-.70$ according to VARC modeling).

Introducing additional metrics as they become available, particularly at the high school level, is the best approach to reducing the impact of poverty on school performance ratings.